

Fashion Center District Management and Local 210, Production Merchandising and Distribution Employees Union, International Brotherhood of Teamsters, AFL-CIO. Case AO-327

August 17, 1995

ADVISORY OPINION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on August 1 and 14, 1995, respectively, Fashion Center District Management (the Employer) filed a Petition for Advisory Opinion and a brief in support thereof requesting an opinion about whether the Board would assert jurisdiction over its operations under its commerce standards. In pertinent part, the petition alleges as follows:

1. A proceeding, Case SE-58954, filed by Local 210, Production Merchandising and Distribution Employees Union, International Brotherhood of Teamsters, AFL-CIO (Local 210) is currently pending before the New York State Employee Relations Board in which an alleged question concerning representation among certain guard and nonguard employees of the Employer is being investigated.

2. The Employer is a not-for-profit New York corporation with its principal place of business located at 249 West 39th Street, New York, New York, where it has been engaged since 1993 in the operation of a business improvement district, including provision of security and sanitation services to retail and wholesale businesses and others that reside within the district located within the Fashion Center of mid-town Manhattan.

3. During the year ending June 30, 1995, a representative period, the Employer derived gross revenues in excess of \$1 million. During the same period, the Employer purchased and received office equipment, telephones, radios, uniforms, cleaning supplies, street lights, print advertising, and other goods, materials, and services used in the course and conduct of its business operations valued in excess of \$50,000 from manufacturers, distributors and other suppliers located outside the State of New York and/or from suppliers located inside the State of New York who received the foregoing from manufacturers and/or others located outside the State of New York. In addition, the Employer provides, on an annual basis, sanitation and security services valued in excess of \$50,000 on behalf of numerous apparel manufacturers, building owners,

and other retail and nonretail businesses within the State of New York who themselves meet the Board's various commerce standards and are subject to its jurisdiction.

4. The NYSERB has made no findings with respect to the commerce data submitted by the Employer.

5. There are no representation or unfair labor practice proceedings involving the same labor dispute pending before the Board.

All parties were served with a copy of the Petition for Advisory Opinion. On August 1, 1995, the Union filed a response in which it asserts that it does not dispute the alleged commerce data, but that a question exists whether the Employer is a political subdivision exempt from the Board's jurisdiction under Section 2(2) of the Act. In support of its position the Union asserts that the Employer is registered with the New York State Attorney General's office as a charitable institution, formed within the meaning of Section 501(c)(3) of the Internal Revenue Code to provide services for the relief and support of the poor, harmless, and indigent living within a certain geographical area in midtown New York City. The Union further asserts that the Employer is established pursuant to New York State general municipal law, section 980 et seq., which permits a special tax to local businesses within particular geographical areas to raise funds for the "Business Improvement District." In addition, the Union asserts that the voting members of the corporation include the mayor of the City of New York, the comptroller of the City of New York, the Borough president of Manhattan County, and the New York City elected council members representing the council district in which the Employer is located.

Having duly considered the matter,¹ the Board is of the opinion that, based on the Employer's undisputed allegations, the Employer would satisfy the Board's commerce standards.² We are unable in this proceeding to resolve the issue raised in the Union's response, however, i.e., whether the Employer is a political subdivision exempt from the Board's jurisdiction under Section 2(2) of the Act. As the Union acknowledges, such a determination would be inappropriate in the context of this proceeding; the Board's advisory opinion proceedings under Section 102.98(a) are designed

¹ The Board has delegated its authority in this proceeding to a three-member panel.

² See, e.g., *Globe Security Systems*, 137 NLRB 109 (1962), applying a \$50,000 nonretail standard to employers providing guard or security services. The Employer meets the Board's nonretail indirect inflow standard.

primarily to determine whether an employer's operations meet the Board's commerce standards for asserting jurisdiction.³ Thus, while we are able to advise the

Employer that it satisfies the Board's monetary standards for asserting jurisdiction, we are unable in this proceeding to resolve the issue raised by the Union.

³ See *St. Paul Ramsey Medical Center*, 288 NLRB 913 (1988); and *Narcotic & Drug Research*, 288 NLRB 912 (1988).